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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

STEPHEN CHANG and HONGYAN CHEN,)	No. C 07-3562 SBA
)	
Plaintiffs,)	
)	
v.)	REPLY IN SUPPORT OF MOTION TO DISMISS
)	
MICHAEL CHERTOFF, Secretary,)	Date: October 16, 2007
Department of Homeland Security;)	Time: 1:00 p.m.
ROBERT S. MUELLER, III, Director of the)	Courtroom: 3, 3rd Floor
Federal Bureau of Investigation,)	
)	
Defendants.)	

Plaintiffs oppose Defendant Mueller's motion to dismiss the Complaint against him. Plaintiffs assert that they challenge the delay in adjudicating their applications, including the incomplete name check. Plaintiffs' Opposition, p. 2. They essentially argue that because the United States Citizenship and Immigration Services ("USCIS") utilizes the Federal Bureau of Investigation's ("FBI") name check program to investigate the backgrounds of applicants for immigration benefits, that removes the discretionary function of the FBI's investigatory process. Id., p. 3. Plaintiffs also assert that the name check process must be subject to a time requirement. Id., p. 4. Contrary to Plaintiffs' assertions, the FBI is not subject to the Court's jurisdiction. Accordingly, Defendant Robert S. Mueller should be dismissed from the Complaint.

1 Since March 1, 2003, the Department of Homeland Security has been the agency responsible
2 for implementing the Immigration and Nationality Act. See 6 U.S.C. §§ 271(b)(5), 557. Thus, the
3 only relevant Defendant here is Michael Chertoff, in his capacity as Secretary of the Department of
4 Homeland Security, and Defendant Robert S. Mueller should be dismissed. See Clayton v.
5 Chertoff, et al., No. 07-cv-02781-CW, slip. op., at 4-7 (N.D. Cal. Oct. 1, 2007) (dismissing non-
6 Homeland Security defendants because neither the FBI nor the Attorney General have the statutory
7 obligation or authority to adjudicate adjustment applications); Konchitsky v. Chertoff, No. C-07-
8 00294 RMW, 2007 WL 2070325, at *6-7 (N.D. Cal. July 13, 2007) (stating “courts squarely
9 addressing the issue of whether they have jurisdiction to compel the FBI to perform name checks
10 . . . have overwhelmingly concluded that they do not.”); Dmitriev v. Chertoff, No. C 06-7677 JW,
11 2007 WL 1319533, at *4 (N.D. Cal. May 4, 2007) (dismissing the FBI without comment on
12 jurisdiction).

13 The bulk of Plaintiffs’ arguments go to the alleged nondiscretionary duty of USCIS to adjudicate
14 their applications. Plaintiffs’ Opposition, pp. 4-7. That is not what is at issue in this Motion. In his
15 Motion, Defendant Mueller asks the Court to join the vast majority of courts across the nation, and
16 recognize that the FBI is not properly named. See Eldeeb v. Chertoff, No. 07-cv-236-T-17EAJ,
17 2007 WL 2209231, at *21 (M.D. Fla. July 30, 2007) (dismissing the FBI, stating that the duty owed
18 by the FBI is to USCIS, not the plaintiff); Yan v. Mueller, No. H-07-0313, 2007 WL 1521732, at
19 *6 (May 24, 2007) (“The evidence shows that the delay is due, not only to the volume of requests
20 that the FBI receives, but also to the FBI’s exercise of discretion in determining the timing for
21 conducting the many name check requests that it receives and the manner in which to conduct those
22 checks.”); Li v. Chertoff, et al., 482 F. Supp. 2d 1172, 1179 (S.D. Cal. 2007) (“Additionally,
23 Plaintiff has not pointed to any statute or regulation requiring the FBI to complete her name check
24 in any period of time, reasonable or not.”); Sozanski v. Chertoff, et al., No. 06-cv-0993, 2006 WL
25 4516968, at *1 (N.D. Tex. Dec. 11, 2006) (holding that federal district courts lack jurisdiction to
26 compel the FBI to perform name checks in adjustment of status cases).

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3 For the foregoing reasons, Defendant Robert S. Mueller respectfully asks the Court to
4 dismiss the Complaint.

5 Dated: October 2, 2007

Respectfully submitted,

6 SCOTT N. SCHOOLS
7 United States Attorney

8 /S/
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10 Assistant U.S. Attorney
11 Attorneys for Defendants
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